PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

BANKRUPTCY.

Act of Bankruptcy, Receiver

A corporation of New York presented a petition, under the New York Code, for its dissolution and the appointment of a receiver of its property, upon the ground of insolvency; which petition was granted. A creditor of the corporation claimed that this petition amounted to a "general assignment for the benefit of creditors," and was therefore an act of bankruptcy within § 3, a, 4, of the Bankruptcy Act, but the Circuit Court of Appeals, Second Circuit, decided that the proceeding could not possibly be construed to come within the term, "assignment." *In Re Empire Co.*, 98 Fed. 981.

BANKS AND BANKING.

Deposit in Name of Another

Few questions have occasioned more contradictory theories and decisions by courts than that of a deposit in a savings bank in the name of another. In *Sullivan* v. *Sullivan*, 56 N. E. 116, the depositor received the following certificate: "A. has deposited in this bank $2,000 payable to the order of herself, or, in case of her death, to B." After A.'s death B. claimed the money. The Court of Appeals of New York, following its own decisions alone, decided that B. had no right to the fund, as against A.'s administrator, no matter whether B.'s claim were based on contract, gift or trust.

BILLS AND NOTES.

Indorsement, Parol Evidence

In Pennsylvania the rule, as laid down by *Ross* v. *Espy*, 66 Pa. 482, would seem to be that the blank indorsement of a negotiable instrument is not such a contract in writing as cannot be altered and varied by parol evidence. In *Bank* v. *Hoopes*, 98 Fed. 935, Judge Dallas, of the Circuit Court (E. D. Penna.), strongly criticises this decision and the reasoning upon which it is based, and he approves of the opposite rule, adopted by the Federal Courts, as being in accord with principle.

CARRIERS.

Absolute Duty to Identify Consignee

The Supreme Court of Ohio has lately been called upon to decide an interesting question on the liability of an express company for the delivery of goods to the wrong person. In *Oskamp* v. *South. Exp. Co.*, 56 N. E. 13, A., fraudulently assuming the name of B., a reputable merchant in his town, ordered goods from C. in another town, by mail, under the name of B., and C. consigned the goods to the express company, directed to B. On the arrival of the goods A., by representing to the agent of the express company that he was B., obtained the goods. In an action by C. against the express company for the false delivery, it was strongly urged on behalf of the defendant that C. had no reason to complain, since the goods were delivered to the actual person to whom C. had consigned them, even though he was mistaken as to the name of that person. The court, however, reversed a judgment for the defendant on the ground that the defendant was under the absolute duty of delivering the goods to B., and to no other person.

CONSTITUTIONAL LAW.

Separate Schools for Colored Children

The Court of Appeals of New York has affirmed the decision of the Supreme Court of that state in *People* v. *School Board*, 61 N. Y. Suppl. 330, to the effect that the Constitution of New York (Art. 9, § 1), providing for a system of free public schools wherein all the children of the state may be educated, is not violated by an act establishing separate schools for white and colored children, since the object of the constitutional provision is only to secure equal facilities for each class: *People* v. *School Board*, 56 N. E. 81.

CONTRACTS.

Contract with Advertising Agent

In *Scott* v. *Pub. Co.*, 62 N. Y. Suppl. 609, the Supreme Court of New York gave a reasonable construction of a contract with an advertising solicitor. The contract provided that he should receive a percentage on all contracts and also "on all business that followed the original contracts." The solicitor, having been discharged, brought an action for his commissions on contracts received, after his discharge, from customers whom he had originally secured. *Held*, that the last clause of the contract must be construed as referring only to contracts secured during plaintiff's employment, since it evidently showed that the plaintiff was under the duty of keeping the advertisers secured

CONTRACTS (Continued).

by him in touch with the paper; therefore the plaintiff had no interest in the continuation of the advertisements after his discharge.

CORPORATIONS.

Dividends, Declaration, Trust Fund

The nature of the relation between a corporation and its stockholders has always raised perplexing questions. One of the latter is presented where a dividend is declared, but before it is paid, the corporation becomes insolvent. In such a case are the stockholders *cestuis que trustent* as to the amount of the dividend, so as to be preferred to the corporation creditors? The Supreme Court of New Hampshire has decided in favor of the view that the dividend must not only be declared, but it must be actually set apart for payment, before the trust relation is raised; otherwise the stockholder occupies the position of a mere creditor in respect to the dividend: *Hunt* v. *O'Shea*, 45 Atl. 480.

COURTS.

Jurisdiction, Penal Action

A statute of Montana (Comp. Laws, 128, § 460) provides that where the trustees of any corporation fail to advertise or file of record reports of the financial condition of the corporation, they shall be jointly and severally liable for the debts of the corporation. In an action against one of the trustees to enforce this liability, it was objected that the action was penal in its nature and could not be brought outside of Montana. The Circuit Court (D. Conn.) decided that under the decision in *Huntingdon* v. *Attrill*, 146 U. S. 676, the action was not penal, but merely remedial, therefore the Circuit Court had jurisdiction: *Davis* v. *Mills*, 99 Fed. 39.

DEEDS.

What Amounts to a Delivery

Clark v. *Clark*, 56 N. E. 82, is one of the many cases to the effect that an actual delivery of a deed to the grantee is not necessary to give validity to the deed. It appeared that the grantor had the deed prepared and gave it to a notary with the instructions to deliver it to the grantee. Before the notary had made the delivery the grantor married, subsequent to which he went to the notary and obtained the deed, saying that he would deliver it, which he did. The Supreme Court of Illinois decided that the grantor's wife was not entitled to dower, on the ground that the delivery to the notary for the purpose of delivery to the grantee was *ipso facto* delivery to the grantee, in the absence of any evidence to show that the grantor intended to retain any control over the deed.

HUSBAND AND WIFE.

Nature of Action for Loss of Wife's Services

In *In Re Tinker*, 99 Feb. 79, a novel effort was made to have adopted the ancient common law conception of the relation between husband and wife. The Bankruptcy Act (§ 17, S. 3) provides that a discharge shall not affect judgment "for a wilful and malicious injury to the person or property of another." The creditor, who had obtained a judgment against the bankrupt for criminal conversation of the creditor's wife, claimed that if this was not a judgment for an injury to his "person," it was at least one for an injury to his "property." The District Court (S. D. N. Y.), however, refused to take this view and discharged the bankrupt from the judgment.

INSURANCE.

Insurable Interest under Georgia Code

The Civil Code of Georgia (§ 2114) provides that "An insurance on life is a contract by which the insurer, for a stipulated sum, engages to pay a certain amount of money if another dies within the time limited by the policy. The life may be that of the assured or of another in whose continuance the assured has an interest." In *Union Fraternal League* v. *Walton*, 34 S. E. 317, the Supreme Court of Georgia naturally decided that the above provision only affirms the common law rule that the doctrine of insurable interest applies only where one takes out a policy on the life of another, and it does not limit a person who insures his own life in the choice of the beneficiary. Curiously enough, Lumpkin, J., dissented on the ground that the term "assured" in the Code was synonymous with "beneficiary," so that in all cases the beneficiary must have an insurable interest in the life of the person who insures his own life.

MORTGAGES.

Sale of Crop on Mortgaged Land

"Can a mortgagor, who has planted crops that have become subject to the lien of a prior mortgage on the land, constructively sever the crop before it matures or ripens, by merely executing and delivering a bill of sale of the uncut crop to a third party, so as to defeat the mortgagee's or the purchaser's right to claim the crop after he has purchased the land at a foreclosure sale made before the actual physical severance of the crop?" This question is answered in the negative by the Court of Appeals of Maryland in *Wootton* v. *White*, 44 Atl. 1026, but it will be observed that the decision does not cover the case where the crop is severed and delivered prior to the foreclosure sale.

NEGLIGENCE.

Open Electric Car, Duty to Furnish Guard Rail on Dangerous Side

Citizens' St. Rwy. v. *Hoffbauer*, 56 N. E. 54, decides a comparatively new point on the subject of electric railways. As is well known, it is customary, on double-track electric street railways, where the poles are between the tracks, to run the cars on the right hand track, and, where the cars are the open ones used in the summer time, with alighting platforms along the sides, to place a guard rail along the left hand side, in order to prevent the passengers from alighting in a dangerous position. In this case the car, which was running backward, was, unknown to the plaintiff, a passenger, on the left hand track, so that the unguarded platform was toward the line of poles, in the middle of the street. The plaintiff stepped on the platform to obtain a transfer from the conductor, where he was struck by a pole. The Appellate Court of Indiana held that the plaintiff was not guilty of contributory negligence *per se*, since he had a right to assume that the unguarded side of the car was the safe one.

WILLS.

Undue Influence, Confidential Agent

It is well settled that where a confidential agent of the testator draws the will, under which he takes a large benefit, the burden is upon him to prove absence of undue influence. But this rule does not apply where the will in question is made to supersede a former will, the validity of which is not questioned, and where the confidential agent would have received the same benefit under the former will: *Walton's Estate*, 45 Atl. (Pa.) 426.

General Plan of Will, Particular Words

McDowell's Estate, 45 Atl. 419, is an instance of the extreme length to which courts have gone in overruling particular sentences in wills so as to make them conform to what is thought to be the "general scheme" of the will. Here the testator left his property equally among his children, subject to a life estate in his wife. To the will an undated codicil in these words was added: "In the final division of my estate I desire that the grandchildren shall be taken into consideration and that the estate shall be so divided that the grandchildren shall have equal shares." The Supreme Court of Pennsylvania held that, as the codicil was, presumptively, of the same date as the will, it did not sufficiently appear that the testator meant to disturb the scheme of distribution in the will; the codicil was therefore held to apply only to those grandchildren whose parents were dead at the death of the life tenant, that is to say, the codicil was treated as of no legal effect.